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MALAYAN BANKING BHD

v.

PAXELENT CORPORATION BHD

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HIGH COURT MALAYA, JOHOR BAHRU
SYED AHMAD HELMY J
[ORIGINATING SUMMONS NO: [MT-1] 24-2741-2004]
31 MARCH 2006

C ***CIVIL PROCEDURE:*** *Reciprocal enforcement of judgments - Setting aside registration of foreign judgment - Whether judgment registered in contravention of ss. 5(1)(a)(i) and 4(4) Reciprocal Enforcement of Judgments Act 1958 - Whether defect curable through amendment - Reciprocal Enforcement of Judgments Act 1958, ss. 4(1)(a), (4),*
D *5(1)(a)(i), 6(3)*

This was an application by the Judgment Debtor ('JD') to set aside the order of this court given on 2 March 2005 for the registration of a Singapore judgment in the sum of
E S$1,609,688.51. It was the JD's contention that the Judgment Creditor ('JC') had not only failed to adduce clear evidence as to the exact amount due under the Singapore judgment by not accounting for the dividends received and not providing the tabulation showing the reduction of the judgment sum through
F payments received, but from the evidence adduced, the JC had, as at 2 March 2005, received a sum of at least S$1,820,285.30 which was never deducted when the judgment was registered. The main ground relied upon by the JD to set aside the registration was that the Singapore judgment was registered in contravention
G of ss. 5(1)(a)(i) and 4(4) Reciprocal Enforcement of Judgments Act 1958 ('REJA').

Held (allowing the application):

(1) Upon a close reading of s. 4(4) REJA, it is plain and obvious
H that a foreign judgment can only be registered in respect of the sum outstanding and payable as at the date of registration. The rationale behind the requirement of registering the balance amount of the foreign judgment that has been satisfied in part is emphasized by s. 4(1)(a) REJA which prohibits the
I registration of a foreign judgment which has been wholly satisfied. In respect of the JC's argument that the defect was

curable through an amendment, it was obvious from the wording of s. 6(3) REJA thereof that only upon the order being set aside could the provision be invoked of the balance amount. There had been no fresh application to register the balance as at the date and, hence, the provisions of s. 6(3) REJA could not be of assistance to the JC. In any event, there is no provision in the REJA which provides for an amendment to an *ex parte* order for registration. It is trite that the procedural rules of the High Court in the form of the Rules of the High Court 1980 cannot add substantive law to what is not expressly spelt out in the REJA; therefore, in the absence of any provision for amendment in the REJA, the order could not be amended. In the light of the aforesaid, there was a clear contravention of s. 4(4) REJA that was sufficient for a grant of an order in terms of the JD's application. (paras 8, 9, 10, 11, 12 & 13)

Legislation referred to:
Reciprocal Enforcement of Judgments Act 1958, ss. 4(1)(a), (4), 5(1)(a)(i), 6(3)

For the judgment creditor - Foong Chee Keong; M/s Cheah Teh & Su
For the judgment debtor - Clarence Edwin (R Param with him); M/s Zaid Ibrahim & Co

Reported by Suresh Nathan

JUDGMENT

Syed Ahmad Helmy J:

[1] By encl. 8 the judgment debtor seeks to set aside the order of this court given on 2 March 2005 for the registration of the Singapore judgment.

[2] The order for the registration of the Singapore judgment was for the sum of S$1,609,688.51.

[3] It is the judgment debtor's contention that the judgment creditor has not only failed to adduce clear evidence as to the exact amount due under the Singapore judgment by not accounting for the dividends received and not providing the tabulation showing the reduction of the judgment sum through payments received but from the evidence adduced the judgment

creditor has as at 2 March 2005 received a sum of at least S$1,820,285.30 which was never deducted when the judgment was registered.

[4] Three grounds were advanced by the judgment debtor to set aside the registration of the Singapore judgment, namely:

1. The Singapore judgment was registered in contravention of the Reciprocal Enforcement of Judgments Act 1958 (REJA).

2. The enforcement of the Singapore judgment would be contrary to public policy in Malaysia.

3. There is some other sufficient reason for setting aside the registration.

[5] I shall proceed to address the first ground which if I hold in the affirmative would be sufficient to dispose of the application without the necessity of going into the other two grounds.

[6] The first ground which is the main ground relied upon by the judgment debtor to set aside the registration was that the Singapore judgment was registered in contravention of s. 5(1)(a)(i) and s. 4(4) of REJA the relevant portions of which reads as follows:

S. 5(1)(a)(i) provides:

> On an application in that behalf duly made by any party against whom a registered judgment may be enforced, the registration of the judgment:
>
> a) shall be set aside if the registering court is satisfied:
>
> i) that the judgment ... was registered in contravention of this Act ...

S. 4(4) provides:

> If at the date of the application for registration the judgment of the original court has been partly satisfied, the judgment shall not be registered in respect of the whole sum payable under the judgment of the original court, but only in respect of the balance remaining payable at that date.

[7] The judgment creditor in resisting the application argues that the order of registration merely repeats the terms of the Singapore judgment and does not state whether the entire sum or only a part thereof is being registered. Hence it is submitted that there is

no basis for the judgment debtor to conclude that the judgment was registered for more than what is due as the order merely registers the foreign judgment without specifying the amount due under the judgment. The judgment creditor further contends that the contravention of s. 4(4) of REJA is a mere technicality and may be rectified by an amendment to the order through the provisions of s. 6(3) of REJA.

[8] Upon a close reading of s. 4(4) it is plain and obvious that a foreign judgment can only be registered in respect of the sum outstanding and payable as at date of registration. The rationale behind the requirement of registering the balance amount of the foreign judgment which has been satisfied in part is emphasized by s. 4(1)(a) of REJA which prohibits the registration of foreign judgment which has been wholly satisfied.

[9] On the judgment creditor's argument that the defect is curable through an amendment it is appropriate to analyse the provision of s. 6(3) of REJA which provides as follows:

> Where the registration of a judgment is set aside solely for the reason that the judgment, notwithstanding that it had at the date of the application for registration been partly satisfied, was registered for the whole sum payable thereunder, the registering court shall, on the application of the judgment creditor, order judgment to be registered for the balance remaining payable at that date.

[10] It is obvious from the wording thereof that only upon the order dated 2 March 2005 being set aside can the provision be invoked of the balance amount. There has been no fresh application to register the balance as at date and hence the provisions of s. 6(3) of REJA cannot be of assistance to the judgment creditor. In any event there is no provision in the REJA which provides for an amendment to an *ex parte* order for registration.

[11] It is trite that the procedural rules of the High Court in the form of the Rules of High Court 1980 cannot add substantive law to what is not expressly spelt out in REJA and hence in the absence of any provision for amendment in REJA the order cannot be amended.

A **[12]** In the light of the aforesaid there was a clear contravention of s. 4(4) of REJA and accordingly I do not propose to go to the merits of the other two grounds of contrary to public policy and some other reason for setting aside as on the score of contravention is sufficient to dispose of the merit of the judgment
B debtor's application.

[13] I accordingly make an order in terms of the judgment debtor's application in encl. 8.

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